(175)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, CJ.

Writ Petition No. 4127 of 1992

Petitioners

1. A. Satyarao, aged about 45 years S/o A. Satyanarayan, working as Asstt. Teacher, Camp No.1 Bhilai Nagar, District Durg (M.P)
2. A.K. Laxminarayan, S/o Surya Prakash Rao aged about 37 years, working as Assistant Teacher in the High School Pravas Andhra Pathshala Camp No.1 Bhilai Nagar, District Durg (M.P.)

Vs.

Respondents

1. Pravas-Andhra Pathshala Committee, through its Chairman, Bhilai Nagar, Camp No.1, Bhilai, District Durg
2. Secretary, Pravas-Andhra Pathshala Bhilai Nagar Camp. No. 1 Bhilai (Durg)
3. Deputy Director Education (School), Durg (M.P)
4. K.Umashankar Rao S/o K.Krishnamurti Asstt. Teacher, Pravas-Andhra Pathshala Camp. No.1 Bhilai Nagar Distt. Durg
5. J. Mohanrao S/o J. Sardhe, Assistant Teacher, Pravas-Andhra Pathshala Camp No.1, Bhilai District Durg.

Petition under Articles 226/227 of the Constitution of India

Present: Shri F.S. Khare, counsel for the petitioners.
Shri B.R. Ghosh, counsel for respondents 1 and 2.
Shri A.S. Kachhawaha, G.A. for respondent No.3/State.

ORAL ORDER

(Passed on 25th April, 2007)

Respondents No. 4 & 5 are served with notice of this writ petition but they have chosen to remain absent. Therefore, they are placed *ex parte*.

(2) The first respondent is an aided institution.

(3) The petitioners claim that they were appointed as Assistant Teachers by respondents No. 1 and 2 on fixed pay in the year 1977 and 1978

respectively. According to them, the respondents No. 1 and 2, sometime in the year 1992, have selected and appointed respondents 4 and 5 to the post of Assistant Teachers ignoring the claim of the petitioners, therefore, they are before this Court inter alia seeking a writ in the nature of certiorari to quash the selection of respondents No. 4 and 5 as Assistant Teachers and further to direct respondents No. 1 and 2 to include their names in the post of Assistant Teachers.

(4) Notice of this writ petition was served on respondents No. 1 and 2. They have filed their return.

(5) Learned counsel appearing for respondent No.3 would submit that it was expected of respondents No. 1 and 2, which is an aided institution, to inform the competent authority under the provisions of Ashashkiya Shikshan Sanshtha (Adhyapokn Tatha – Anya Karmachariyon ke Bharti) Niyam, 1979, (hereinafter referred as 'the Rules') and since that has not been done, they are not responsible for any misdeeds committed by respondents No. 1 and 2.

(6) Learned counsel appearing for the petitioners would contend before me that the respondents are expected to follow the procedure under Rule 8 of the Rules while making selection and appointment to the post of Teachers and other employees in an aided institution and since that has not been done, the entire selection process and appointment of respondents No. 4 and 5 is not only illegal but also contrary to Rule 8 of the Rules.

(7) Learned counsel appearing for respondents No. 1 and 2 would submit that in the selection process held, the Education Officer was present and therefore, the entire selection process was in accordance with law. Therefore, he requests this Court not to interfere with the selection and appointment of respondents 4 and 5.

(8) The undisputed facts are, that petitioners No. 1 and 2 were appointed as Assistant Teachers in a school run by respondents No. 1 and 2

sometime in the year 1977 and 1978 respectively. It has also come on record that respondents No. 4 and 5 were appointed as Assistant Teachers by respondents No. 1 and 2 sometime in the year 1992.

(9) Rule 8 of the Rules provides for a procedure that requires to be followed by an aided institution while appointing teachers and other employees in the institution. In order to appreciate the contention of the learned counsel for the petitioners it would be appropriate to extract Rule 8 of the Rules and the same is as under:

> "8. (1) Where an Institution desires to fill up any vacancy of a post of a teacher or other employees, it shall make a reference to that effect to the Education Officer, the Divisional Superintendent of Education or the Ayog as the case may be, along with a requisition in Form III.
>
> (2) On receipt of a reference under sub-rule (1), the Education Officer, the Divisional Superintendent of Education or the Ayog, as the case may be, shall furnish information to the Institution concerned in Form IV and such information shall relate to, -
>
> (a) Person having more length of continuous service in educational institution shall be given priority over the person having lesser service at his credit;
>
> (b) Person who was permanent in service shall have priority over a person who was temporary in service; or
>
> (c) Person whose services were terminated earlier shall have priority over a person whose services were terminated later.
>
> (3) If no suitable and otherwise qualified teacher or other employee is available, the Education Officer, the Divisional Superintendent of Education or Ayog, as the case may be shall furnish a non-availability certificate to the Institution concerned."

(10) Sub-Rule (1) of Rule 8 envisages that whenever an institution desires to fill up any vacancy of a post of a teacher or other employees, it shall make a reference to that effect to the Education Officer or the Divisional Superintendent of Education or the Ayog as the case may be in a particular form prescribed under the Rules.

(11) Sub-Rule (2) of Rule 8 of the Rules cast an obligation on the Education Officer on receipt of a reference made by the school authorities under sub-Rule (1) of Rule 8 of the Rules. It envisages that after receipt of such reference of the school authorities, the Education Officer shall inform the institution concerned with regard to the person having continuous service in the educational institution shall be given priority over the person having less service at his credit; and he would also inform that the person who was permanent in service shall have priority over a person who was temporary in service; and lastly a person whose service were terminated earlier shall have priority over the person whose services were terminated later. Sub-Rule (3) of Rules states that if for any reason, no suitable or qualified teachers or other employees are not available, the Education Officer, the Divisional Superintendent of Education or Ayog as the case may be shall furnish a non-availability certificate to the institution concerned.

(12) Having seen the procedure that requires to be followed by the school authorities before any appointment of teachers or any other employees has to be made, let us come back to the facts and circumstance of the case.

(13) It is the case of respondent No.3 that at no point of time the school authorities had made any reference either to the Education Officer or the Divisional Superintending Education about the necessity or desire to fill up any vacancy of school teachers or other employees.

(14) The first respondent which is an aided institution is bound by the statutory rules framed by the State Government. It is expected to follow the

procedure prescribed under Rule 8 of the Rules whenever it desires to fill up any vacancy of teachers or other employees in the institution.

(15) In the instant case, without resorting to the procedure prescribed under Rule 8 of the Rules, the school authorities whimsically and fancifully have appointed respondents No. 4 and 5 as Assistant Teachers in the institution run by them. This action of the respondents is not only illegal but also contrary to Rule 8 of the Rules. The learned counsel for the respondents No.1 and 2 would contend that the Education Officer was one of the parties in the selection process and therefore it should be assumed and presumed that the entire selection process is in conformity with the rules. In my view merely because the Education Officer participates in the selection process, it cannot be said that the entire selection process is legal. The aided institution requires to follow the statutory rules and the selection of Teachers requires to be made in conformity with the rules. Therefore, the appointment of respondents 4 and 5 can not be sustained by me. Accordingly, the following:

Order

(i) Petition is allowed.

(ii) Rules made absolute.

(iii) The appointment of respondents No. 4 and 5 as Assistant Teachers in the school run by respondents No. 1 and 2 is quashed.

(iv) Respondents No. 1 and 2 are directed to fill up the post of Assistant Teachers, if they so desire, in the school run by them strictly in accordance with law and by following the procedure prescribed under Rule 8 of the Rules.

(v) The parties shall bear their respective costs.

(vii) Ordered Accordingly.

Sd/-
Chief Justice